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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,389	07/24/2006	Bob Van Someren	NL040092	1302

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EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT	PAPER NUMBER
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2627

MAIL DATE	DELIVERY MODE
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02/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,389	Applicant(s) VAN SOMEREN, BOB	
	Examiner JORGE L. ORTIZ CRIADO	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 is drawn to a “computer program” *per se*, therefore, fail(s) to fall within a statutory category of invention.

A claim directed to a computer program itself is non-statutory because it is not:

A process occurring as a result of executing the program, or

A machine programmed to operate in accordance with the program, or

A manufacture structurally and functionally interconnected with the program in a manner which enable the program to act as a computer component and realize its functionality, or

A composition of matter.

See MPEP § 2106.01. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional

interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the memorized tilt angles". There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the means for creating the tilt map". There is insufficient antecedent basis for this limitation in the claim

The term "appropriate model" in claim 9 is a relative term which renders the claim indefinite. The term "appropriate" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 10 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by Moriya et al. U.S. Patent No. 5,202,864.

As per claim 1, Moriya et al. discloses a device (Fig. 1) for scanning an optical disc, the disc (202) comprising a pattern) of substantially parallel data tracks, the device comprising an optical pick up unit for creating, from a light beam, a spot on a data track of the pattern ;means for moving the spot relative to the pattern; means for determining a radial tracking error signal, the radial tracking error signal indicating a deviation of the spot relative to the data track, the means for determining the radial tracking error signal being arranged for determining a periodic signal from the radial tracking error signal while the spot is radially moving across the pattern, a period of the periodic signal corresponding to a pitch of the data tracks; and means for detecting a tilt angle between an optical axis of the pick up unit and the optical disc, the means for detecting the tilt angle being arranged for detecting an asymmetry in the periodic signal during the period (see Figures 1, 2, 3 for instance with the detailed explanation of drawings; and col. 7, lines 36-49).

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As per claim 2, Moriya discloses wherein the means for detecting the tilt angle is arranged for integrating the periodic signal over an integer number of periods (see Fig. 2; col. 7, lines 36-49; LPF for instance).

As per claim 3, Moriya discloses wherein the means for detecting the tilt angle is arranged for determining a shift of a zero crossing of the periodic signal (See Fig. 2A).

As per claim 4, Moriya discloses further characterized in that the means for determining the radial tracking error signal is arranged for determining a radial push pull (RPP) signal or a differential time detection (DTD) signal (see Fig. 1, for instance elements 14,15 and 16).

As per claim 7, Moriya discloses (col. 7, lines 31-35; Fig. 2) wherein the means for moving the spot comprises means for rotating the disc and an actuator for radially moving the pick up unit across the pattern, while the disc is rotating.

As per claim 10, is drawn to the method used above and is rejected for the same reasons of anticipation.

Claim 11 is drawn a the “program product” / program which is used to operates for instance a processor, Moriya discloses a optical disk apparatus, it is readily understood that such program product is provided to operate such apparatus.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriya et al. U.S. Patent No. 5,202,864.

Although Moriya et al. does not expressly disclose moving the pickup while the disc is stationary or rotating the disc while the pickup is in stationary position. The examiner takes Official Notice that these are merely obvious variants and well known process in the art that are used to produce such tracking error signals.

And one of an ordinary skill in the art would have found obvious to use any of these alternatives variants.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moriya et al. U.S. Patent No. 5,202,864 in view of WO 02/05271 or US. Pat No. 4,710,908.

Although Moriya et al. does not disclose a means for memorizing the detected tilt angles and creating a tilt map of the optical disc depending on the tilt angles. These feature are well known in the art as evidenced by for example (WO 02/05271-{for instance col. 8 to col. 9} or US. Pat No. 4,710,908-{see Figures}) were it is suggested to save and store surface (e.g. tilt, warp, etc. values) and creating a map using those values to be used later in the recording or

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reproduction process of the disc. It would have been obvious to one of an ordinary skill in the art that would be motivated as for the reasons taught in those references.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE L. ORTIZ CRIADO whose telephone number is (571)272-7624. The examiner can normally be reached on Mon.-Fri 10:00 am- 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge L Ortiz-Criado/
Primary Examiner, Art Unit 2627